

CITY OF EDMONDS, WASHINGTON

ORDINANCE NO. 3537

AN ORDINANCE of the City of Edmonds, Washington, relating to the combined water and sewerage systems comprising the waterworks utility of the City; specifying, adopting and ordering the carrying out of a system or plan of additions to and betterments and extensions of that system; authorizing the issuance of not to exceed \$2,000,000 principal amount of its water and sewer revenue bond anticipation note (revolving line of credit) pending the issuance of water and sewer revenue bonds authorized herein; fixing the date, form, maturity, interest rate, terms and covenants of the note; establishing a note redemption fund; and authorizing the issuance and providing for the delivery of the note to Frontier Bank of Edmonds, Washington.

Passed February 15, 2005

This document prepared by:

*Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400*

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AN ORDINANCE of the City of Edmonds, Washington, relating to the combined water and sewerage systems comprising the waterworks utility of the City; specifying, adopting and ordering the carrying out of a system or plan of additions to and betterments and extensions of that system; authorizing the issuance of not to exceed \$2,000,000 principal amount of its water and sewer revenue bond anticipation note (revolving line of credit) pending the issuance of water and sewer revenue bonds authorized herein; fixing the date, form, maturity, interest rate, terms and covenants of the note; establishing a note redemption fund; and authorizing the issuance and providing for the delivery of the note to Frontier Bank of Edmonds, Washington.

WHEREAS, the City of Edmonds, Washington (the “City”), by Ordinance No. 1957 passed and approved November 15, 1977, specified and adopted a plan or system for the acquisition and construction of certain additions and betterments to and extensions and improvements of the combined water and sewerage systems comprising the waterworks utility of the City (the “System”); and

WHEREAS, the City is in need of acquiring, constructing, installing and equipping wastewater facilities and appurtenances identified in Exhibit A attached hereto and by reference made a part hereof (the “Improvements”), the estimated cost of which is \$2,000,000, and the City does not have available sufficient funds to pay that cost; and

WHEREAS, the City Council deems it to be in the best interests of the City to borrow money by the issuance of water and sewer revenue bonds and, pending the issuance of those bonds, issue short-term obligations in accordance with the provisions of chapter 39.50 RCW for the purpose of providing a part of the funds with which to pay the costs of carrying out the Improvements; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN
as follows:

Section 1. Definitions. As used in this ordinance, the following words have the following meanings:

“Bank” means Frontier Bank.

“Bank Commitment” means the letter from the Bank dated January 14, 2005, describing certain terms of the Note and the conditions under which the Bank has offered to accept delivery of the Note.

"Base Rate" means the rate of interest publicly announced from time to time by the Bank as its Base Rate, the change in which takes effect at the opening of business on the day specified in the public announcement of a change in the Bank's Base Rate.

“Bonds” means those water and sewer revenue bonds authorized by this ordinance.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks located in Seattle, Washington, are closed for business.

“City” means the City of Edmonds, Washington.

“Draw or “Loan Draw” means each incremental draw upon the Note.

“Improvements” means the wastewater facilities and improvements identified in Exhibit A, attached hereto and by reference made a part hereof.

“Note” means the Water and Sewer Revenue Bond Anticipation Note, 2005 (Revolving Line of Credit), of the City issued pursuant to, under the authority of and for the purposes provided in this ordinance.

“Note Fund” means the City’s Water and Sewer Revenue Bond Anticipation Note Fund, 2005 (Revolving Line of Credit), created by Section 7 of this ordinance for the purpose of paying principal of and interest on the Note.

“Note Register” means the books or records maintained by the Note Registrar containing the name and mailing address of the Registered Owner.

“Note Registrar” means the Administrative Services Director of the City.

“Plan of Additions” means the plan of additions to and betterments and extensions of the System of the City consisting of the Improvements, as specified, adopted and ordered to be carried out by the City’s six-year capital improvement plan and this ordinance.

“Registered Owner” means the Bank, as registered owner of the Note, or any subsequent owner of the Note.

“System” means the combined water and sewerage systems comprising the waterworks utility of the City, and all additions and betterments thereto and extensions thereof at any time made.

Section 2. Adoption of Plan of Additions. The Improvements are hereby specified and adopted and ordered to be carried out as a system or plan of additions to and betterments and extensions of the Waterworks Utility.

All of the foregoing shall be in accordance with the plans and specifications therefor prepared by the City’s consulting engineers. The District may modify the details of the Plan of Additions where, in its judgment, it appears advisable if such modifications do not substantially alter the intended purposes.

The life of the improvements comprising the Plan of Additions is declared to be at least twenty-five (25) years. The estimated cost of the construction, installation and financing of the

Plan of Additions is declared to be approximately \$2,000,000, of which a portion will be paid from proceeds of the Note.

Section 3. Authorization of Bonds. For the purpose of paying a part of the cost of carrying out the Plan of Additions, the City shall issue its water and sewer revenue bonds in the approximate principal amount of \$2,000,000. Such bonds shall be payable from the revenue of the System, and shall, unless otherwise determined by the City Council (and approved by the Bank while the Note remains outstanding), be issued as a claim or lien on the revenues of the System. Such bonds shall be issued in one or more series at such times as the City shall deem advisable; shall be in such denominations and form, shall be dated, shall bear such interest rate or rates, shall be payable at such time or times, shall have such option of payment prior to maturity, shall guarantee such coverage and collection of rates, shall provide for such additional funds and accounts and shall contain and be subject to such provisions and covenants as hereafter shall be provided by ordinance.

Section 4. Description of Note. For the purpose of providing a part of the funds with which to pay the costs of carrying out the Plan of Additions pending the receipt of the proceeds of the issuance and sale of the water and sewer revenue bonds authorized herein, the City shall issue and deliver its Water and Sewer Revenue Bond Anticipation Note, 2005 (Revolving Line of Credit) (the “Note”), in the principal amount of not to exceed at any time \$2,000,000. The Note shall be dated as of the date of its delivery to the Bank (“Date of Issue”); shall mature two years from the dated date of the Note (the “Maturity Date”) unless the City and the Bank have mutually agreed to extend the Maturity Date for another two years; shall be issued in fully registered form as to both principal and interest; and shall be numbered R-1, with any additional

designation as the Administrative Services Director, as the Note Registrar, deems necessary for purposes of identification.

The City may make Draws upon the Note in any amount (so long as the amount of the Draw does not cause the outstanding principal balance of the Note to exceed \$2,000,000 at any one time) on any Business Day from the Date of Issue to but excluding the Maturity Date, for the Note purposes identified above. No Draw may exceed the total amount of the costs to be paid from such Draw, and the proceeds of each Draw shall be used immediately to pay those costs. Draws shall be recorded in such form as the City and the Bank may agree. The Note evidences a revolving line of credit, and all Draws that have been repaid may be reborrowed subject to the restrictions of this paragraph.

For each Loan Draw, each Loan Draw shall bear interest at a rate equal to 66% of the Base Rate, less 25 basis points (i.e. $0.66 \times (\text{Base Rate} - 0.25)$). The interest rate on Loan Draws shall be adjusted on the same date that any adjustment in the Base Rate is effective.

Interest shall be payable on the monthly anniversary date of the date of issuance of the Bond, commencing with the month of April, 2005, to the Maturity Date or upon early repayment. Interest on the Bond or the portion thereof so prepaid shall cease to accrue on the date of such prepayment. Interest on Loan Draws shall be calculated on the basis of a 365/365-day year for the actual days elapsed. Principal of and the remaining interest due on the Bond shall be payable on the Maturity Date.

The City Council finds that the setting of the above interest rate is in the best interest of the City.

If the Note is not paid when properly presented for payment on the Maturity Date, the City shall be obligated to pay interest on each Loan Draw at the same rate from and after its

maturity or prior redemption date until the Note, both principal and interest, is paid in full or until sufficient money for that payment in full is on deposit in the Note Fund.

Section 5. Designation of Officer to Make Loan Draws. The City Council has determined it to be in the best interest of the City that the Administrative Services Director, or such other person as he may designate, be and hereby is authorized to make Loan Draws against the Note, in the amounts and at the times as he may determine hereafter, those Loan Draws to be made in accordance with the terms and provisions set forth herein.

Section 6. Note Registrar; Registration and Transfer of Note. The Administrative Services Director of the City is appointed and designated to serve as the Note Registrar. The Note shall be issued to the Bank only in registered form as to both principal and interest and shall be recorded on books and records maintained by the Note Registrar (the "Note Register"). The Note Register shall contain the name and mailing address of the owner of the Note and the principal amount and number of the Note held by that owner. The Note may not be assigned or transferred by the Bank, except that the Bank may assign or transfer the Note to any successor to the business and assets of the Bank. When the Note has been paid in full, both principal and interest, the Note shall be surrendered by the Bank to the Note Registrar, who shall cancel the Note.

The Note Registrar shall keep, or cause to be kept, at his office, sufficient books for the registration of the Note. The Note Registrar shall serve as the City's authenticating trustee, registrar and paying agent for the Note and shall comply fully with all applicable federal and state laws and regulations respecting the carrying out of those duties. The Note Registrar is authorized, on behalf of the City, to authenticate and deliver the Note in accordance with the provisions of the Note and this ordinance, to serve as the City's paying agent for the Note and to

carry out all of the Note Registrar's powers and duties under this ordinance and Ordinance No. 2451 establishing a system of registration for the City's bonds and obligations. The Note shall state on its face that the principal of and interest on the Note shall be paid only to the owner thereof registered as such on the Note Register as of the record date set forth therein and to no other person or entity, and that the Note may not be assigned except on the Note Register.

Section 7. Creation of Note Fund; Payment of Note. There is created and established in the office of the Administrative Services Director a special fund designated as the Water and Sewer Revenue Bond Anticipation Note Fund, 2005 (Revolving Line of Credit) (the "Note Fund").

Both principal of and interest on the Note shall be payable in lawful money of the United States of America solely out of the Note Fund from the proceeds of water and sewer revenue bonds authorized by this ordinance to be deposited in such fund, other short-term obligations or from other money legally available and to be used therefor, and the City irrevocably pledges to redeem the Note on its Maturity Date, as extended, from the proceeds of those bonds or other money available for that purpose.

The charge and lien of the Note may be paid from the revenue of the system of the City, but shall be subordinate to the pledge and lien of the City's outstanding water and sewer revenue bonds and bonds issued on a parity therewith.

The Note shall be payable only from the Note Fund as provided herein and shall not be a general obligation of the City, the State of Washington or any political subdivision thereof.

The Bank shall present to the City at least one week prior to the Maturity Date a statement of principal of and interest due on the Note on that date. The City shall pay the principal of and interest on the Note (i) by check, draft or warrant of the City mailed to the Bank

at least five days prior to the Maturity Date or hand-delivered to the Bank on the Maturity Date, or (ii) by electronic fund or wire transfer to the Bank on or before the Interest Payment Date or Maturity Date, at the option of the City. Prepayments of principal may be made at any time and shall be paid by check, draft or warrant of the City or by electronic fund or wire transfer to the Bank. Note payments shall be recorded on a Loan Payment Record attached to the Note, or in such other form as the City and the Bank may agree. Upon repayment of all principal of and interest on the Note at maturity, the Note shall be presented by the Registered Owner at the office of the Note Registrar in Edmonds, Washington, for surrender and cancellation.

Section 8. Prepayment and Redemption Provisions. The City reserves the right and option to prepay and redeem at any time prior to its stated Maturity Date any or all of the principal amount of the Note outstanding at par plus accrued interest to the date of prepayment and redemption. Written notice to the Bank of any intended prepayment or redemption of the Note shall not be required. Interest on the Note or the portion thereof so prepaid shall cease to accrue on the date of such prepayment.

Section 9. Note Form and Execution. The Note shall be printed, lithographed, typed or multicopied on good bond paper in a form consistent with the provisions of this ordinance, shall be signed in the corporate name of the City by the facsimile or manual signatures of the Mayor and City Clerk, and the seal of the City (or facsimile thereof) shall be imprinted or impressed thereon.

The Note shall bear thereon a Certificate of Authentication in the following form, manually signed by the Note Registrar, and only if so executed shall the Note be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

CERTIFICATE OF AUTHENTICATION

This Note is the fully registered City of Edmonds, Washington, Water and Sewer Revenue Bond Anticipation Note, 2005 (Revolving Line of Credit), described in the Note Ordinance.

Administrative Services Director, City of
Edmonds, Washington, Note Registrar

The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

If any officer whose signature appears on the Note ceases to be an officer of the City authorized to sign notes before the Note bearing his or her signature is authenticated or delivered by the Note Registrar or issued by the City, that Note nevertheless may be authenticated, delivered and issued and, when authenticated, delivered and issued, shall be as binding upon the City as though that person had continued to be an officer of the City authorized to sign notes. The Note also may be signed and attested on behalf of the City by any person who, on the actual date of the signing of the Note, is an officer of the City authorized to sign notes, although he or she did not hold the required office on the date of issuance of the Note.

Section 10. Note Covenants. The City covenants with the Bank for as long as the Note remains outstanding as follows:

(a) The City will provide to the Bank annual financial statements prepared by the Washington State Auditor's Office within 45 days from their issue date.

(b) The City will provide annual management prepared statements that "bridge" the State Auditor's two-year audit cycle within 90 days of the fiscal year end.

(c) The City will establish, maintain and collect such rates and charges for water and sanitary sewage disposal service which, together with other miscellaneous revenue of the System (excluding ULID assessments), will provide sufficient amounts annually to provide for operating and maintenance expenses of the System, debt service on all outstanding water and sewer revenue bonds and bonds issued on a parity therewith, and debt service on the Note.

Section 11. Preservation of Tax Exemption for Interest on Note. The City covenants that it will take all actions necessary to prevent interest on the Note from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Note or other funds of the City treated as proceeds of the Note at any time during the term of the Note which will cause interest on the Note to be included in gross income for federal income tax purposes. The City certifies that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

Section 12. Small Governmental Issuer Arbitrage Rebate Exception and Designation of the Note as a “Qualified Tax-Exempt Obligation.” The City finds and declares that (a) it is a duly organized and existing governmental unit of the State of Washington and has general taxing power; (b) no part of the Note is a “private activity bond” within the meaning of Section 141 of the United States Internal Revenue Code of 1986, as amended (the “Code”); (c) at least 95% of the net proceeds of Loan Draws on the Note will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City); (d) the aggregate face amount of all tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) issued by the City and all entities subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) during the calendar year in which the Note is issued is not reasonably

expected to exceed \$5,000,000; and (e) the amount of tax-exempt obligations, including the Note, designated by the City as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Note is issued does not exceed \$10,000,000. The City therefore certifies that the Note is eligible for the arbitrage rebate exception under Section 148(f)(4)(D) of the Code and designates the Note as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code.

Section 13. Approval of Bank Commitment and Deposit of Loan Draws. Pursuant to the Bank Commitment, Frontier Bank of Edmonds, Washington, has presented to the City an offer to extend a revolving line of credit secured by a water and sewer revenue bond anticipation note (the “Bank Commitment”), and proposing to accept the Note under the terms and conditions provided in the Bank Commitment relating to the water and sewer revenue bond anticipation note, which Bank Commitment is on file with the City Clerk and is incorporated herein by this reference. The City Council finds that accepting the terms and conditions of the Bank Commitment is in the City’s best interest and therefore the proper City officials are authorized to accept such a commitment. A fee in the amount of \$5,000 shall be paid to the Bank upon delivery of the Note and may be paid in the form of a Loan Draw.

The Note will be printed at City expense and will be delivered to the purchaser in accordance with the Bank Commitment, with the approving legal opinion of Foster Pepper & Shefelman PLLC, municipal bond counsel of Seattle, Washington, regarding the Note.

The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Note to the Bank and for the proper application and use of the proceeds of the Loan Draws made pursuant to the Note.

The principal proceeds received as a result of Loan Draws on the Note shall be paid into the City Fund 414, Capital Improvement Fund that has been previously created and established in the office of the Administrative Services Director and used to pay a part of the costs of accomplishing the Plan of Additions. Interest earnings on the amounts, if any, in the Utility Fund shall be retained in that fund and used for the purposes of that fund. However, it is expected that the proceeds will be spent immediately.

Section 14. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Edmonds, Washington, at a regular open public meeting thereof this 15th day of February, 2005.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

FOSTER PEPPER & SHEFELMAN PLLC
Bond Counsel

Filed with the City Clerk:	02/11/2005
Passed by the City Council:	02/15/2005
Published:	02/17/2005
Effective Date:	02/22/2005

EXHIBIT A

IMPROVEMENTS INCLUDED IN PLAN OF ADDITIONS

Treatment Plant Screening. Installation of a screen system on the up-hill side of the Treatment Plant. Estimated useful life is 25 years.

Outfall Emergency Repair. Repair and replacement of a collapsed sewer outfall line extending into Puget Sound. Estimated useful life is 50 years.

CERTIFICATION

I, the undersigned, City Clerk of the City of Edmonds, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. 3537 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on February 15, 2005, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after the title of the ordinance has been published in the City's official newspaper; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of February, 2005.

CITY OF EDMONDS, WASHINGTON

SANDRA S. CHASE, City Clerk